IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

W.P.Nos.2389 and 14121 of 1998

WRIT PETITION No.2389 of 1998

Between:

Md.Shafuddin, S/o. Gulam Naseeruddin.
aged about 50 years, Working as UDC

in the Office of the Chief Engineer, APSEB.,
Nizamabad.

..... PETITIONER

AND

1 APSEB, Rep. Member Secretary.
Vidyut Soudha, Hyderabad-49.
2 Chief Engineer, APSEB. Nizamabad Zone, Nizamabad.
3 Superintending Engineer, Operation Circle,
APSEB., Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, especially one in the nature of Writ of Mandamus i) to declare the BP(P&S-BR)Ms.No.217 dated 18-01-1997 and consequential Memo No.CEN/DM/PO/Adm/F./DNo.3135/97 dated 03/09/1997, issued by the 2nd respondents; and memo No. CO/Adm/E1/F.No.2894/97 dated 17/01/1998 issued by the 3rd respondent as illegal, arbitrary, without jurisdiction ; ii) direct the respondents not to revert the petitioner from the post of UDC., and iii) and pass any such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of

the case.

Counsel for the Petitioner: Mr. K.VASUDEVA REDDY

Counsel for the Respondents: Mr. S.RAVINDRANATH

Standing Counsel for A.P.S.E.B.

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WRIT PETITION No.14121 of 1998

Between:

M.Adinarayana, S/o. Suryanarayana.
Working as UDC in the

Office of ERO., Palakonda, Srikakulam district

..... PETITIONER

AND

1 APSEB., Rep. Member Secretary.
Vidyut Soudha, Somajiguda,
Hyderabad.
2 The Superintending Engineer (Operation Circle),
Srikakulam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ or order or direction, especially one in the nature of "Writ of Mandamus" i) to declare the BP(P&G.Per)Ms.No.217 dated 18/01/1997 and consequential Memo No.SE/O/SKL/Adm/A1/DNo.442/98 dated 23/02/1998, issued by the respondent-II as illegal, arbitrary, without jurisdiction and quash the same, ii) direct the respondents not to revert the petitioner from the post of UDC., and iii) and pass any such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.K.VASUDEVA REDDY

Counsel for the Respondents: Mr. S.RAVINDRANATH

Standing Counsel for A.P.S.E.B.

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The Court made the following :

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COMMON JUDGMENT:

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The short point that falls for consideration in these writ petitions is whether the cancellation of exemption granted in favour of the petitioners from passing requisite test for promotion to the higher category was right or not ?

The petitioners, who had put in more than 15 years of service in the category of Lower Division Clerk (LDC), were given exemption under Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulation Part II relaxing Regulation 15 of the Andhra Pradesh State Electricity Board Service Regulation Part-III from passing Accounts Test for Subordinate Officers Part-I, which was one of the requisite qualifications for promotion to the post of Upper Division of Clerk (UDC), and in pursuance of the said exemption, the petitioners were promoted as

UDCs. However, the said promotion was also made subject to certain conditions. Condition No.3 of the Order dated 27-7-1996 passed by the Superintending Engineer, Operation, Nizamabad in favour of the petitioner in W.P.No.2389 of 1998 reads as under:

> "3. The promotion ordered above is subject to the result of cases pending in Supreme Court as ordered in B.P.Ms.No.442, dt.27.5.85 and B.P.Ms.No.414, dt.3.5.89"

The petitioners worked in the capacity of UDC for about a year and after that a Memo was issued asking them to show cause as to why exemption granted to them should not be cancelled in view of the Judgment of the Supreme Court in C.A.Nos.180-181 of 1984. Petitioners had filed detailed explanation. After considering the same, the impugned Proceedings were issued cancelling the exemption granted to them. Thereafter, consequential proceedings of reversion to the post of LDC were given effect to. Challenging the same, the present writ petitions are filed.

Learned counsel for the petitioners submits that the Judgment of the Supreme Court in Civil Appeal Nos.180-181 of 1984, dated 27-2-1996 has no consequence whatsoever insofar as the petitioners are concerned. The respondent-Board had invoked the provisions under Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulation Part II and considered the cases of the petitioners individually and granted exemption. He also states that the Judgment of the Supreme Court in C.A.Nos.180-181 of 1984 was much prior to the date of considering the petitioners' individual cases for exemption from passing the Accounts Test for Subordinate Officers Part I and their consequential promotion to the post of UDC. Further, the Apex Court only deprecated the practice of granting general exemption and never ruled that in a given case, to achieve the ends of justice, relaxation cannot be extended and Regulation 41 of the Regulations, which enables the Board for granting exemption in individual cases as bad in law. Learned counsel drawn attention to the judgment of the Supreme Court in Civil Appeal Nos.180-181 of 1994, dated 27-2-1996, which reads as under:

> "The Andhra Pradesh State Electricity Board (the Board) issued an order dated August 5,1981 which reads as under:
>
> **PERSONNEL SERVICES**
>
> B.P.Ms.No.664 Dated 5th August,1981

Read the following:

1. B.P.Ms.No.173, dated 24-4-1975.

The proposal to grant exemption from passing the departmental tests to the Lower Division Clerks/Typists/Steno-typists and Upper Division Clerks, who have rendered long service in the same post, who are not covered by the provisions of B.P. cited for promotion to next higher category has been under consideration of the Board for some time past.

2. After a careful consideration, the Andhra Pradesh State Electricity Board directs that the Lower Division Clerks, Typists/Steno-typists and Upper Division Clerks, who have good record of service and completed 15 years of service in the same post, shall be exempted from passing the tests prescribed in the Andhra Pradesh State Electricity Board Service Regulations Part III as a pre-condition for promotion to the next higher posts of U.D. Clerk and Accountant/Superintendent, respectively.

The appellants were given relaxation from passing the test in terms of the above quoted order. T A Ramasastry and various other similarly situated persons challenged the order granting relaxation to the appellants from passing the test. A learned single Judge of the High Court dismissed the writ petition. The appellate Bench, however, reversed the findings of the learned single Judge and quashed the relaxation granted to the appellants and also set aside the Order No.661 quoted above.

Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulations (the Regulations) which permits the Board to grant relaxation is as under:

41. RELAXATION OF REGULATIONS BY THE BOARD:-

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No regulation made in exercise of the powers conferred by sub-section (c) of Section 79 of the Electricity (Supply) Act,1948 shall be construed to limit or abridge the power of the Board to deal with the case of any person serving under the Board in such manner as may appear to it to be just and equitable.

Provided that, where any such regulation is applicable to the case of any person or a class of persons, the cases shall not be dealt with in any manner less favourable to the person or class of persons than that provided by that regulation.

The learned single Judge came to the conclusion that relaxation in terms of Regulation 41 could be granted in individual as well as in respect of a class of employees. The Division Bench, however, reversed the findings of the single Judge and came to the conclusion that the language of Regulation 41 of the Regulations only permits relaxation in individual cases to achieve just and equitable result.

We have heard learned counsel for the parties. It is not necessary for us to go into the correctness of the interpretation given by the Division Bench of the High Court. The relaxation was given to the appellants as back as 1981. By that time, the appellants had already put in more than 15 years of service. After further 15 years today, most of them would be nearing retirement. We are of the view that taking any the relief granted by the Electricity Board to the appellants in the year 1981 would do more harm than good. We, therefore, in the facts and circumstances of this case uphold the relaxation, from passing the test granted to the appellants by the Board in the year 1981. We make it clear that we are not upholding the order of the board on the interpretation of the rule, but keeping in view the time lapse and also to achieve the injustice, which is likely to be caused to the appellants in case the relaxation is withdrawn today.

> We, therefore, set aside the Judgment of the Division Bench of the High Court so far as the relief part is concerned and uphold the order of the Board granting relaxation to the appellants from passing the test. The appeals are allowed to the above extent. No costs."

Whereas, the learned standing counsel for the respondents while referring to the above Judgment, contends that exemption in respect of an individual or a class, both are bad in law and, therefore, the exemption granted in favour of the petitioners was bad and as such, the same was withdrawn after providing an opportunity to the petitioners. As such, the same cannot be said to be either arbitrary or illegal.

From the above Judgment of the Supreme Court, it is seen that B.P.Ms.No.664, dated 5-8-1981 given a blanket exemption to the LDCs, Typists/Steno-typists and UDCs, who had rendered long service of 15 years in the same post and who are not covered by the B.P.Ms.No.173, dated 24-4-1975 for promotion to the next higher category and the Board considered that those who have completed 15 years of service and have good record of service were exempted from passing the tests prescribed in the Andhra Pradesh State Electricity Board Service Regulation Part III for promotion to the higher post. That was a case where a general exemption was given for the employees, who had put in good record and 15 years of service. Under those circumstances, a Division Bench of this Court in Writ Appeal No.675 of 1981 and batch, dated 7-10-1983 held as under:

> "….the power conferred by Regulation 41 has been invoked to eliminate all eligible persons and enable ineligible persons for promotion. There is no rational basis for granting such a general exemption to those who had put in 15 years of service and have good record of service for qualifying themselves for promotion. It is not a commandable drive or propernant to end discrimination. It is a case where preferential treatment is given to unmerited, which is a breach of Article 14 of the Constitution of India."

The said judgment of the Division Bench was approved by the Apex Court in the above C.A.Nos.180-181 of 1984 insofar as the interpretation of the Regulation 41 is concerned. It is curious to note that the Judgment of the Supreme Court in the said cases was dated 27-2-1996, whereas the promotions to the petitioners were given on 27-71996 and 14-8-1996 respectively, by which time, even the Judgment of the Supreme Court was already available and the authorities had passed a routine order as was being passed in the rest of such cases. Petitioners have categorically

represented saying that the said Judgment of the Apex Court has no relevance to their case and theirs was a case where exemption was granted after considering their individual merits. The exemption orders made in favour of petitioners also made it clear that in exercise of the powers conferred under Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulation Part II, the Chief Engineer (Electrical) directed relaxation of Regulation 15 of the Andhra Pradesh State Electricity Board Service Regulation Part III, since they had put in 15 years of regular service with 5 years of good record. The respondents contended that though separate proceedings were issued, the case of three persons including petitioners herein was considered together and exemption was granted relaxing Regulation 15 of the Andhra Pradesh State Electricity Board Service Regulation Part III by invoking Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulation Part II and, therefore, it must be deemed that it was a general exemption granted and the merits of each case was not considered. But, they have not produced any record in this regard, in spite of granting time to do so. Exemption Order does not indicate that it was *en mass* exemption of all the persons, who have completed 15 years of service etc. Each order of exemption passed in favour of petitioners would show that after careful consideration, the competent authority had recommended for relaxation of the service Rules by invoking Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulation Part II.

Further, it is curious to note that the case before the Supreme Court was that the individuals, who were aggrieved by granting exemption under the above B.P.Ms.No.664, dated 5-8-1981 filed writ petitions before this Court and a Division Bench of this Court deprecated such practice saying that it is not a commandable drive or propernant to end discrimination and it was a case of preferential treatment given to unmerited and under those circumstances, the Apex Court observed as above. In the cases on hand, it is not the case of the respondents that when exemption was granted any persons were affected or their promotional chances were marred. It is also not the case of respondents that any eligible or qualified candidates are deprived in view of the exemption granted in favour of petitioners. In the absence of any aggrieved party challenging the exemption granted in favour of the petitioners, the same cannot be faulted with, since, as stated above, the exemption was granted only after examining their individual cases and nobody aggrieved by the said action.

Learned counsel for the petitioner brought to the notice of this Court clause (3) of the exemption order dated 29-6-1996 passed in favour of the petitioner in W.P.No.2389 of 1998, which reads as under:

> "(iii) The SE, Op, Nizamabad is informed that according to the instructions issued in Bd's Memo 3rd cited, in regard to filling up of the existing vacancies of UDC in the ratio of 3:1 between qualified and unqualified LDC/Typists the unit of 4 vacancies should be taken and it should be ensured that no unqualified should be promoted against qualified quota post in the next unit of 4 vacancies without first obtaining exemption orders in respect of 4th unqualified candidate in the immediately previous unit of 4 vacancies and issue orders promoting him after obtaining orders from the Board."

From the above, it is clear that the vacancies of UDCs were filled up in the ratio of 3:1 between qualified and unqualified LDCs/Typists in a unit of 4 vacancies and care was taken not to promote unqualified persons against qualified quota. While admitting the writ petitions, interim orders were passed directing the respondents to continue the petitioners in service as UDCs during the pendency of the writ petitions. Thus, they are being continued in service as UDCs.

In the circumstances, I am of the considered opinion that as on the date of granting exemption in favour of the petitioners, the judgement of the Supreme Court in C.A.Nos.180-181 of 1984 was already available and the respondents had not properly verified the facts and some stereo-typed orders were issued. Thus, the condition No.3 in the order dated 27-7-1996 passed by the Superintending Engineer, Operation, Nizamabad, extracted at paragraph-2 above, was irrelevant. Further, it is not case of respondents that no such exemption was ever granted thereafter. In fact, the Board has been issuing proceedings one after another relaxing the service rules by invoking the power under Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulation Part II. Further, the exemption granted in favour of petitioners cannot be said to be a general exemption. In fact, the individual exemptions recommended by the concerned authority were taken into consideration and exemption was granted from Regulation 15 of the Andhra Pradesh State Electricity Board Service Regulation Part III by invoking the Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulation Part II. Since the Apex Court has never said that there should not be any exemption by invoking Regulation 41, the individual exemptions granted in favour of petitioners cannot be said to be bad or invalid. Here, it may be necessary to note that in respect of the petitioner in W.P.No.2389 of 1998, the exemption was granted by the

concerned authority i.e., the Chief Engineer, Electrical, Nizamabad by Proceedings dated 29-6-1996 and in respect of the petitioner in W.P.No.14121 of 1998, the exemption was granted by the Superintending Engineer, Operation Circle, Srikakulam by Proceedings dated 22-7-1996. Therefore, the impugned orders dated 3-9-1997 of the 2nd respondent and Memo dated 17-1-1998 of the 3rd respondent in W.P.No.2389 of 1998 and the Order dated 23-2-1998 passed by the 2nd respondent in W.P.No.14121 of 1998 are liable to be set aside. Accordingly, they are set aside.

The writ petitions are allowed to the above extent. No costs.

10th August, 2004

Prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this tenth day of August Two thousand and four.

ASSISTANT REGISTRAR.

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SECTION OFFICER

To

1 The Member Secretary, APSEB,
Vidyut Soudha, Somajiguda, Hyderabad.
2 Chief Engineer, APSEB. Nizamabad Zone, Nizamabad.
3. Superintending Engineer, Operation Circle,
APSEB., Nizamabad.

4 The Superintending Engineer (Operation Circle),

Srikakulam.

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